

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF INDIANA  
3 INDIANAPOLIS DIVISION

4 UNITED STATES OF AMERICA, )  
Plaintiff, ) CAUSE NO.:  
5 ) 1:07-CR-125-04-SEB/KPF  
6 -v- ) Indianapolis, Indiana  
7 JESUS MANUEL FIERRO-MENDEZ, ) **January 15th, 2010**  
Defendant. ) 10:20 a.m.

8  
9  
10 **Before the Honorable**  
11 **SARAH EVANS BARKER, JUDGE**

12 OFFICIAL REPORTER'S TRANSCRIPT OF  
13 SENTENCING

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20 Court Reporter: Laura Howie-Walters, CSR, RPR  
21 Official Court Reporter  
United States District Court  
22 46 E. Ohio Street  
Room 217  
23 Indianapolis, Indiana 46204

24  
25 PROCEEDINGS TAKEN BY MACHINE SHORTHAND  
TRANSCRIPT PRODUCED BY ECLIPSE NT COMPUTER-AIDED TRANSCRIPTION

1 (Open court.)

2 THE COURT: Good morning, all. You may be seated.

3 Mr. Hill, I'm sorry to hear about your tumble this morning.

4 MR. HILL: Well, it was either you or the hospital,  
5 and I chose you.

6 THE COURT: Well, I guess I'm honored, but I hope  
7 you can let me know if I can help you get some attention.

8 MR. HILL: Thank you, Your Honor.

9 THE COURT: I'll be glad to make a call or two.

10 MR. HILL: I appreciate that.

11 THE COURT: What time is your plane back?

12 MR. HILL: At four this afternoon, I believe.

13 THE COURT: Okay.

14 This doesn't need to be on the record.

15 (Off-the-record discussion.)

16 THE COURT: Mr. Hernandez, nice to have you in court  
17 today, and we surely do appreciate your services.

18 THE INTERPRETER: Thank you, Your Honor.

19 THE COURT: Would you be sworn, please.

20 (Interpreter sworn)

21 THE COURT: Thank you.

22 And, Miss Schneeman, would you call the matter  
23 before the Court, please.

24 (Call to order of the Court)

25 THE COURT: All right. This matter's on the Court's

1 calendar for entry of a plea -- no, for sentencing, sorry.  
2 The plea was entered on May 26th, 2009. So today's hearing is  
3 to permit the Court to receive the information that bears on  
4 the decision that has to be made about a reasonable sentence  
5 to be imposed as punishment.

6 So, Mr. Hill, would you escort Mr. Fierro-Mendez to  
7 the podium, please.

8 Mr. Blackington, I didn't mean to ignore you. It's  
9 nice to see you in court today, too.

10 MR. BLACKINGTON: Nice to see you as well, Judge.

11 THE COURT: Buenos dias.

12 THE INTERPRETER: Good morning.

13 THE COURT: Are you Jesus Manual Fierro-Mendez, the  
14 same person named by the Clerk who just called this matter?

15 THE DEFENDANT: Yes.

16 THE COURT: Mr. Fierro-Mendez, what is your age now,  
17 please?

18 THE DEFENDANT: 47 years old.

19 THE COURT: And how far did you go in school?

20 THE DEFENDANT: That would be elementary -- no,  
21 excuse me, that would be high school.

22 THE COURT: High school? Okay.

23 The Presentence Report shows that you went to school  
24 in Mexico for about 11 years; is that accurate?

25 THE DEFENDANT: Yes.

1 THE COURT: Prior to coming to court today, I know  
2 you've been in custody, but have you consumed any substance,  
3 alcohol, medicine or narcotic, that would interfere with your  
4 ability to understand and participate in this hearing?

5 THE DEFENDANT: No.

6 THE COURT: Are you under the care of a doctor for  
7 any condition that might interfere?

8 THE DEFENDANT: Only for high blood pressure.

9 THE COURT: Do you have medication for that?

10 THE DEFENDANT: Yes.

11 THE COURT: And you take it regularly?

12 THE DEFENDANT: Yes.

13 THE COURT: And did you receive your most recent  
14 dose?

15 THE DEFENDANT: Last night.

16 THE COURT: Very good. You recall -- I recall in  
17 any event, and probably you do, too -- your appearance before  
18 the Court in May when you entered your plea of guilty to this  
19 charge against you. Do you remember that, sir?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: The probation department, after that  
22 hearing, prepared a Presentence Investigation Report.  
23 Mr. Adamson, who's sitting over at that table, do you  
24 recognize Mr. Adamson?

25 THE DEFENDANT: Yes, I saw him on the TV, I believe.

1 THE COURT: Okay. He prepared the Presentence  
2 Investigation Report in this case. And having prepared the  
3 report, he's sent it around for everyone to read and review.  
4 And after that process was completed, this matter was set down  
5 for the sentencing hearing because we'll use this report now  
6 to help fashion a reasonable sentence.

7 So my question, my first question to you with  
8 respect to the report is did you read the report and have it  
9 translated for you?

10 THE DEFENDANT: Yes.

11 THE COURT: Did you have sufficient time to go over  
12 it with Mr. Hill so that you have the benefit of his advice?

13 THE DEFENDANT: Yes.

14 THE COURT: Mr. Hill, did you have sufficient time  
15 to review the report and discuss it with Mr. Fierro-Mendez?

16 MR. HILL: Yes, Your Honor.

17 THE COURT: Mr. Blackington, have you had sufficient  
18 time to review the report and prepare for the hearing today?

19 MR. BLACKINGTON: Yes, Your Honor.

20 THE COURT: When you read through the report and had  
21 it interpreted for you, Mr. Fierro-Mendez, you probably  
22 noticed, but I want to make sure that you noticed, that it has  
23 two kinds of information in it. One part of the report is a  
24 compilation of biographical information about you, so anyone  
25 who reads the report would learn about your family, your

1 health, your education, all of those things.

2 The other part of the report has to do with this  
3 offense that you've been found guilty of and how the  
4 sentencing guideline is applied. Did you notice that about  
5 the report, that it has those two kinds of information?

6 THE DEFENDANT: Yes.

7 THE COURT: This is a document that is tailor-made  
8 to you.

9 Step back just a little bit because I think you're  
10 in the line of transmission between the microphones. Just  
11 step back about -- that's good.

12 This is a document that is retained in the court's  
13 records, we say under seal, S-E-A-L, which means it's kept in  
14 a confidential status, and therefore is not revealed to the  
15 public or to the media. There are a few other official uses  
16 that can be made of it, but it's limited to those.

17 Do you understand that, sir?

18 THE DEFENDANT: Yes.

19 THE COURT: In addition to the report, nothing has  
20 come to me that I've withheld from you. So there have been no  
21 letters, no communications with the lawyers that excluded you.  
22 Sometimes I have to confer with the lawyers. I never confer  
23 with just one lawyer on a case, but sometimes I have to confer  
24 with both to get a case moving forward so that we can get the  
25 matters resolved, that sort of thing. But that sort of

1 conference wasn't required, and so you know everything that I  
2 know of a factual nature on the basis of which I'll make a  
3 sentencing decision today.

4 Do you understand that, sir?

5 THE DEFENDANT: Yes.

6 THE COURT: Now, Mr. Adamson has prepared a memo to  
7 me to assist me in fashioning a sentence. There are no new  
8 facts in his memo. His memo relates to what's in the report  
9 that you've seen and reviewed. His memo is a confidential  
10 document, and he's prepared it pursuant to our court rules.

11 The primary purpose of it is to help me to tie up  
12 all the loose ends when it's time to pronounce sentence so I  
13 don't leave something out. You're not prejudiced by his memo  
14 in any way because there's no factual information in there  
15 that you haven't had access to.

16 Do you understand that, sir?

17 THE DEFENDANT: Yes.

18 THE COURT: Now, as you can tell from the report, we  
19 cover -- part of what the report covers is the sentencing  
20 guidelines and how they apply to your case. Did you notice  
21 that?

22 THE DEFENDANT: Yes.

23 THE COURT: Now, we use the guidelines to assist the  
24 analysis as to what a reasonable sentence is. My obligation  
25 under law is to impose a reasonable sentence. And that word

1 "reasonable" has a special meaning in this context. It means  
2 reasonable under law, and the law sets out the criteria for a  
3 reasonable sentence. And Mr. Adamson has included those at  
4 the end of the Presentence Report. He's listed them in  
5 paragraph 71.

6 Those seven factors -- I'll just mention them just  
7 to remind you: The first one is the nature and circumstances  
8 of the offense, and the history and characteristics of you in  
9 terms of your commission of the offense. The second one is  
10 the sentence must reflect the seriousness of the offense and  
11 promote respect for the law and so forth.

12 Those factors are the factors imposed by law on my  
13 decision-making. And to the extent that I can accomplish a  
14 sentence that encompasses those factors, it will be deemed  
15 legally reasonable.

16 So we use the guidelines because, in many respects,  
17 the guidelines incorporate these factors, but they don't have  
18 the last word on the matter, even though they're influential.  
19 After we do the guideline calculation, we ask one more  
20 question. We say "Okay, that's how the guidelines come out,  
21 but is that reasonable here in Mr. Fierro-Mendez's case?"

22 So that's where we're headed and that's what I'm  
23 thinking about. Those will be the factors that I'm listening  
24 for as I try to make a reasoned judgment here as to a  
25 reasonable sentence. Do you understand that, sir?



1 THE DEFENDANT: Yes.

2 THE COURT: Is what I have told you essentially what  
3 Mr. Hill has told you?

4 THE DEFENDANT: Yes.

5 THE COURT: Now, according to your plea agreement, I  
6 just harken back in a summary way, you are leaving the issue  
7 of the sentence up to me to decide by virtue of your plea  
8 agreement.

9 The Government has agreed, based on your  
10 cooperation, to make a decision as to whether your cooperation  
11 warrants their filing what we call a Rule 35 motion, which  
12 basically is a post-sentencing motion that allows the Court to  
13 look at the sentence again and see if it deserves to be  
14 reduced because of your cooperation.

15 Do you remember making that a part of your plea  
16 agreement?

17 THE DEFENDANT: Yes.

18 THE COURT: And you've also executed, as a part of  
19 your plea agreement, an appeal waiver without any conditions.  
20 As a part of your plea, you're giving up your right to appeal  
21 the sentence that's imposed today. Do you remember making  
22 that a part of your agreement?

23 THE DEFENDANT: Yes.

24 THE COURT: So when the report was circulated for  
25 all to review, according to the addendum, neither side had any

1 objections to the way in which Mr. Adamson interpreted and  
2 applied the guidelines.

3 Is that your view, Mr. Hill?

4 MR. HILL: It is, Your Honor.

5 THE COURT: And yours, Mr. Blackington?

6 MR. BLACKINGTON: It is, Your Honor.

7 THE COURT: My own judgment is that Mr. Adamson has  
8 correctly interpreted and applied the guidelines. So I will  
9 use this formulation that's laid out in the report as the  
10 beginning point for my decision on what a reasonable sentence  
11 is.

12 The upshot of this guideline application is that you  
13 have a total offense level of 41 and a criminal history  
14 category of 1. Do you remember how we got to those numbers?

15 THE DEFENDANT: Yes.

16 THE COURT: And you understand that we use them  
17 basically to look at the sentencing table. Do you remember  
18 seeing this sort of table? And we go down 41, which is pretty  
19 far on this chart, it's clear down here (indicating), and the  
20 criminal history category 1. And the other guidelines are in  
21 the manual that happens to be the convenient place for the  
22 sentencing table, so I just show it to you to refresh your  
23 memory.

24 But the guidelines that apply in your case are 324  
25 months on the low end up to 405 months on the high end.

1 You're not eligible for probation. The period of supervised  
2 release, the guideline term is five years. The statute says  
3 no less than five years.

4 The fine range is \$25,000 on the low end up to  
5 \$4 million on the high end. Restitution, which means paying  
6 back the victims of the offense, doesn't apply, but the \$100  
7 special assessment is a fee that has to be paid to the Clerk  
8 and it's mandatory. So that will be part of any judgment  
9 that's imposed.

10 Can that be paid today, Mr. Hill?

11 MR. HILL: Yes, ma'am.

12 THE COURT: Would you see that that's done at the  
13 Clerk's office --

14 MR. HILL: Yes, I will.

15 THE COURT: -- before you leave?

16 MR. HILL: Yes, ma'am.

17 THE COURT: So those are the guidelines that apply  
18 to your case, and that's the starting point for the decisions  
19 that have to be made. Do you agree with that extrapolation,  
20 Mr. Hill?

21 MR. HILL: I do, Your Honor.

22 THE COURT: And do you, Mr. Blackington?

23 MR. BLACKINGTON: Yes, Your Honor.

24 THE COURT: So it's appropriate, Mr. Fierro-Mendez,  
25 for you to speak and tell me whatever it is you want me to

1 know and think about and take into account.

2           Once the sentence is imposed today, it's not likely  
3 that there will be another opportunity to make this decision.  
4 It's sort of a now or never matter. So don't put off till  
5 some other time whatever it is you think will be helpful to  
6 me, and that you would like me to know in fashioning a  
7 sentence assuming there will be another time, because there's  
8 not likely to be.

9           After I hear from you, then I'll hear from Mr. Hill  
10 on your behalf. And I'll hear from Mr. Blackington on behalf  
11 of the Government, and then I'll make the decision as to a  
12 reasonable sentence.

13           So you may lead off, sir.

14           THE DEFENDANT: Thank you. I am 47-years-old and I  
15 have six children. I have cooperated even before I ran into  
16 problems. I've cooperated with the Government of the United  
17 States. I continue to cooperate. I have been in custody for  
18 one year and three months, and I continue to cooperate.

19           The crime that I acknowledge, it happened due to a  
20 situation that we were living down in Ciudad, Juarez.  
21 Currently, that problem still persists. It is even worse, and  
22 we have the opportunity of helping the community on both  
23 sides.

24           What I have been requesting even before I was  
25 arrested is that they would give me the opportunity to do it,

1 and I continue to ask for that, Your Honor. Thank you.

2 THE COURT: Well, I suspect you have a lot of  
3 information you could give the Government based on the offense  
4 you're convicted of here. The amount of cocaine that you were  
5 responsible for transporting, in conjunction with this  
6 particular case, 1,600 kilograms of cocaine is -- it's a  
7 horrific amount. It's a mind-boggling amount.

8 The Presentence Report says 50 kilograms each week  
9 during about an eight or nine-month time frame, and that in  
10 terms of getting it here, you were an organizer and you were a  
11 leader of the effort to get it here.

12 So the amount of harm that was caused from that, the  
13 amount of damage that you do to the societal fabric by  
14 injecting that kind of cocaine amount into the community is --  
15 well, it's just almost impossible to imagine how you justified  
16 it at the time and justified it to yourself.

17 I know from the Presentence Report that you don't  
18 personally use drugs; is that true?

19 THE DEFENDANT: It is true.

20 THE COURT: So this was your business, this was your  
21 way of life. This large-scale drug dealing was how you  
22 decided that you were going to get whatever money you  
23 needed to live on. And in the process, of course, you put  
24 everything at risk, but I have to imagine, because I read the  
25 newspapers, we all read the newspapers and we follow the

1 reports, that the kind of risk that you've brought upon  
2 yourself and your family now by even being involved in this is  
3 the greatest risk of all, that you've placed in danger your  
4 family and your children, and you've placed them in danger in  
5 a way that you can't possibly protect them because you're  
6 going to be locked up.

7           So I have to assume during the period of time that  
8 you were engaged in this, you weren't thinking about these  
9 things, but I'm hoping that having been arrested and charged  
10 and now having admitted them, you've thought about them  
11 perhaps for the first time.

12           Any way you look at the guideline sentence of 320  
13 months to 400 months, it's a long time. And at the end of the  
14 sentence, there's a likelihood that you'll be deported as  
15 well. So by then, your children will be grown. I hope your  
16 wife will still be around and in good health, but her life  
17 will have changed, too, as yours did.

18           So I can't imagine under what series of thoughts you  
19 thought this was worth it. Was it worth it?

20           THE DEFENDANT: Of course not.

21           THE COURT: Well, maybe you can somehow communicate  
22 that to your children so they know that they don't have to  
23 learn by making the same horrendous mistakes that you made.  
24 We'll hope for that.

25           Mr. Hill, what would you say on Mr. Fierro-Mendez's

1   behalf?

2               MR. HILL:   Your Honor, since my -- since my  
3   involvement began in this case, Mr. Fierro has been  
4   cooperating with the Government both here and in El Paso.  He  
5   is scheduled to be a witness in a case involving a major drug  
6   dealer within the next couple of weeks in El Paso.

7               You know, this is such a -- he was a very good  
8   police officer.  He did -- he was, you know, like the head of  
9   the SWAT team and stuff in Juarez, and he alienated both  
10  sides.  There are two sides to things in Juarez.  There's the  
11  La Linea, the Juarez Cartel, and there's the Sinaloa Cartel,  
12  and they are the ones that are fighting and killing each other  
13  now.

14              His brothers are involved in this business, and I  
15  know he doesn't speak about his brothers, but they saved his  
16  life because the cartel people had come to the hospital.  He  
17  had been wounded and they had come to the hospital, the cartel  
18  people, to pick him up to kill him because he didn't cooperate  
19  with the cartels.

20              Well, as a result, his brother saved him and then  
21  they, you know, it's the godfather principal.  I mean, they  
22  tell him "Okay, we saved you.  Now you have to do something  
23  for us."  And that's how he got involved in this was his  
24  loyalty to his brothers, and the fact that he felt like he  
25  owed them because they had saved his life; otherwise, he

1 wouldn't have been here to do anything anyway. And that was  
2 the involvement here.

3 Now, the amounts that are attributed to him, I  
4 realize that was -- but his actual involvement was less than  
5 1,600 kilos, but at any rate --

6 THE COURT: That's what the Presentence Report says,  
7 you know.

8 MR. HILL: Yes, ma'am. And since his arrest, he's  
9 cooperated and continues to cooperate. He's given -- I've sat  
10 in debriefings and interviews with him with the Drug  
11 Enforcement, with Homeland Security, with all kinds of people,  
12 and he has cooperated. I mean, he's given them so much  
13 intelligence.

14 Now, Russell Leachman is the U.S. Attorney that's  
15 handling the case in El Paso, and he's a very close friend of  
16 mine. And he told me, he said, "You know, this guy is about  
17 as high up and has as much knowledge about just the inner  
18 workers of things in Mexico, and especially in Juarez," as  
19 anyone he's ever heard about or seen.

20 And, you know, he has children from a prior marriage  
21 that resided in Mexico. They've finally gotten them over to  
22 El Paso. We had a real problem with that also. But, you  
23 know, we had to keep everything under wraps because we were  
24 afraid that something would happen to them because those  
25 people over there are very ruthless.



1 THE COURT: That's what I understand.

2 MR. HILL: I mean, we live with it every day, you  
3 know. We had 69 deaths in one day a week ago over there. And  
4 Mr. Fierro is -- he was in a unique position in that the major  
5 people in the cartels would court him and try to get him to do  
6 work for them.

7 So he has an extraordinary amount of knowledge about  
8 the inner workings of who's who and what's what. And he had  
9 already begun to cooperate with ATF and with Customs down  
10 there in El Paso prior to this happening. But, you know, for  
11 whatever reason, the other agencies said it was just too much  
12 for them. It ended up now it's not too much for DEA but, you  
13 know, there's so many aspects to this case and so many loose  
14 ends and so many things going on that he is clearing up for  
15 the Government. And it's just -- it's a continuous thing, and  
16 I'm sure it's going to go on for the next, you know, year, two  
17 years, something like that.

18 I mean, my involvement in this case doesn't end  
19 here. I'm listening, you know, to all this, and I'm hearing  
20 what's going on in the interviews. And I know that a lot of  
21 stuff -- a lot of information that he's given them is just  
22 that, information. It doesn't rise to the level of  
23 substantial assistance, but he has given them a road map as to  
24 how things work over there, who's involved, which people --  
25 he's helped identify people.

1           He even -- Sylvestre Reyez is our United States  
2 Representative, and I was the best man at his brother's  
3 wedding. He was a sheriff in El Paso. And I went to a  
4 Christmas party with Sylvestre Reyez. He even was responsible  
5 for identifying a person who had -- and was responsible for  
6 getting released the niece of Sylvestre Reyez that they had  
7 kidnapped over in Juarez.

8           And, I mean, he's done a lot of good things. I know  
9 that this is a terrible offense, but at the same time, I think  
10 he's really trying to right his wrongs. I mean, he's going to  
11 testify in the case that's coming up, and then there are going  
12 to be more cases as a result of this.

13           And, you know, right now, the main person in Mexico  
14 that's left is Joaquin Guzman, Chapo Guzman; and Mr. Fierro  
15 knows him personally, has met him, knows of locations and  
16 things that they need, and has identified all of this for the  
17 Government. I've been there every time when they've had these  
18 discussions, and they go on for hours and hours.

19           And I talk to Mr. Fierro usually once or twice a  
20 week. His wife goes to my office. And she's even trying to  
21 cooperate with the Government to help him, and is putting  
22 herself out there, you know, that -- there's still some  
23 activity that's going on up here that they're trying to work  
24 on.

25           But I guess what I'm trying to say is that I would

1 ask the Court to consider the lower end of the guideline range  
2 because he -- I mean, you know, 27 years is 27 years any way  
3 you cut that. And with what he's trying to do and what he's  
4 attempting to do, I see that he really is trying to right his  
5 wrong here.

6 Not only that but, you know, I anticipate there will  
7 be maybe even more than one request for a Rule 35 because  
8 what's happened is Russell Leachman, the U.S. attorney that's  
9 handling this case, has told me, he said, "It's kind of  
10 piecemeal as we go." He said, "After he testifies on  
11 Arandula, then we'll make a Rule 35 motion."

12 There's some things going on up here that if they  
13 could come to fruition, then he would get a request on that  
14 end. There's some other cases in El Paso that he's attempting  
15 to help with, things that he's helping to do right now that  
16 may result in that. But I guess my request is that despite  
17 the gravity of this crime and the situation, I'm asking the  
18 Court to consider the fact that he's doing everything he can  
19 at this point to correct things. Thank you.

20 THE COURT: What happened to that AK47? Was it  
21 seized?

22 MR. HILL: You know -- yes, ma'am. What happened,  
23 the ATF people or the Customs people in El Paso knew about  
24 this gun, and had told him, you know, "Yeah, you can keep it  
25 there for your protection" because there had been a couple of

1 incidents that happened there that --

2 THE COURT: An assault weapon?

3 MR. HILL: Yes, ma'am. He's an expert with it. I  
4 mean -- but all I'm saying, he had those in his police career  
5 all the time, but they were well aware of it.

6 It's the strangest situation, you know, and I  
7 haven't been able to get a handle on it completely, but there  
8 were people from Homeland Security and some Customs people and  
9 everything else that were there because the people that he was  
10 dealing with originally, the agents from other -- not from  
11 DEA. DEA is probably the most competent group that I see, you  
12 know. I mean, they do the best work and their cases are the  
13 best cases.

14 But what had happened was that they took him up to a  
15 certain point, and then they just said -- they kind of let him  
16 go, you know, just unleashed him there. I mean, just told him  
17 "You can keep that gun there, you can do" this and that, but  
18 they told him right at the end of the thing, they said, "This  
19 is just too big for us, we can't deal with it." And they just  
20 walked away, I mean, right in the middle of all of this.

21 There's some concern on the part of the authorities  
22 in El Paso, the federal authorities in El Paso, that there was  
23 some maybe collusion, cooperation, something, between some of  
24 these agents and the people in Juarez. That's a totally  
25 separate issue, totally separate thing. It's ongoing also,

1 but the weapon was seized. It was at his house is where it  
2 was.

3 And, you know, there had been some attempts to pick  
4 up his wife, to pick him up. Those things -- you have no idea  
5 what life is like in El Paso.

6 THE COURT: Well, it sounds to me like it's almost  
7 totally lawless.

8 MR. HILL: It is.

9 THE COURT: Sort of a jungle.

10 MR. HILL: It is. And much more so in Juarez. They  
11 have destroyed that city. And, you know, they cross over  
12 frequently. They kidnap people in El Paso, take them back to  
13 Mexico. They find their bodies and things. It's not unheard  
14 of. I mean, it's very common.

15 THE COURT: Sad.

16 MR. HILL: Yes. It's --

17 THE COURT: Deeply sad.

18 MR. HILL: It's a hard place to live. I haven't  
19 been there in maybe two years just because, you know, I don't  
20 have much fear of anything, never have, but I'm not going to  
21 stick my head in the noose either.

22 THE COURT: Showers in Indianapolis you probably  
23 ought to fear a little bit more.

24 MR. HILL: You know, I think Mr. Blackington and  
25 Cody set that trap for me.

1 THE COURT: You think they did?

2 MR. HILL: I think they did.

3 THE COURT: They chose that room for you, did they?

4 MR. HILL: They did.

5 No, but -- you know, he had the gun, but it was for  
6 his protection, because there had been attempts to pick him  
7 up. I mean, there was one time he was on the roof for like  
8 three hours because they were trying to pick him up. And the  
9 cars had been seen and he called the people and nobody came to  
10 his rescue.

11 THE COURT: Wow.

12 MR. HILL: So, I mean -- and he was in El Paso  
13 thinking he was safe, but no, he wasn't safe.

14 THE COURT: Mr. Blackington, what's the Government's  
15 view?

16 MR. BLACKINGTON: Your Honor, first of all, I  
17 appreciate the cooperation he's given. It's largely been  
18 confined to El Paso. And the U.S. Attorney's Office and DEA  
19 are handling it in El Paso because it largely doesn't tie into  
20 our prosecution.

21 For whatever reason, he wasn't able to identify any  
22 of the unidentified males in our cases that we have fugitive  
23 warrants for, but I think the important thing at this hearing  
24 first of all, is yes, he is cooperating. Yes, I've agreed to  
25 file a Rule 35 motion.

1           At this point, almost a hundred percent of what  
2 would be the basis of the Rule 35 motion is some trial  
3 testimony he'd be giving in a case in El Paso. That's about a  
4 month or more away.

5           But it's important at this point, I think, to set a  
6 base for what the sentence ought to be without the  
7 cooperation, and then deal with the cooperation later. I  
8 don't think we should deal with it twice and he should get a  
9 benefit from it twice.

10           And what's important to look at here is the  
11 courts --

12           THE COURT: Is it part of your agreement, your  
13 promise, to make a Rule 35 motion?

14           MR. BLACKINGTON: In the trial that's coming up in  
15 El Paso, if he testifies at that point, that will be  
16 substantial assistance and we will file a Rule 35 motion if he  
17 does come through with that, and if the U.S. attorney in  
18 El Paso advises me that he's done that, that will happen.

19           THE COURT: Okay.

20           MR. BLACKINGTON: This is really one of the most  
21 serious drug-trafficking offenses we've had in this district.

22           THE COURT: It's one of the most serious I've seen.

23           MR. BLACKINGTON: We don't usually see this.  
24 Usually when we get a cocaine dealer who's at a level 38,  
25 yeah, he got five kilograms of cocaine for a month for four

1 years, and that's how we get over 150 kilograms. This guy was  
2 at that or over it in a month.

3           Compounding the issue here is his role in the  
4 offense, and also, what he was. He wasn't just a police  
5 officer as the Presentence Report indicates. He was a  
6 Comandante in the Puma unit in Juarez, which is a drug strike  
7 force in Juarez. And in effect, what was happening is the fox  
8 was guarding the chicken house there for many years. And it's  
9 not -- although we haven't pursued and the probation office  
10 didn't pursue a two-level adjustment for abuse of trust, it's  
11 arguable that it's there. So his guideline range could have  
12 been significantly higher.

13           But when, you know, you look at the violence and the  
14 deaths in El Paso -- Danny Delgado's brother-in-law, the Court  
15 heard about the circumstances of his murder. Over -- there  
16 were over 10,000 people like that murdered in Juarez last  
17 year. And it's so bad, when Agent Dooley and I went down  
18 there to interview a witness last year, we saw this magazine,  
19 kind of a business periodical, at the hotel, and right in the  
20 middle, they're advertising in both Spanish and English for a  
21 car armoring service.

22           The type of things that happen down there, we just  
23 don't see up here. And this is a case really that shows us  
24 that what happens in Juarez and what happens in El Paso  
25 affects us in Indianapolis in a very dramatic way.



1           So I think that when the Court looks at the  
2 guidelines in this case of 324 to 405 months, that's an  
3 appropriate range in this case. And when the Court considers  
4 applying a certain sentence within those guidelines, and the  
5 Court considers really the fact that he was a high-level  
6 police officer in Juarez doing this type of thing, I don't  
7 think a sentence at the bottom of the guideline range is  
8 appropriate. I would tend toward the top or at least at the  
9 middle of the guideline range because that's a factor that  
10 wasn't taken into consideration in calculating the guideline  
11 range.

12           This is a very serious offense, and I think that it  
13 deserves a very serious sentence. And from that point, we  
14 will advise the Court down the road of what exactly his  
15 cooperation was, and the Court can depart downward at that  
16 point in time based upon the quality of his cooperation.

17           And as I understand it, speaking with AUSA Leachman  
18 down there, that this trial's coming up in a month, month and  
19 a half, and there's some stuff beyond that that hasn't panned  
20 out as of yet, but I think when we come back here at some  
21 point with a Rule 35 motion, assuming he continues to go  
22 through with the cooperation, the Court can address that at  
23 this point.

24           But I think a very long sentence is warranted here,  
25 Your Honor. This case is just corruption to the core. It

1 goes right to everything that's bad that we hear about that  
2 goes on in El Paso, and a lot of bad up here in Indianapolis.  
3 There's a lot of cocaine that got up here as the Court  
4 acknowledges. It warrants a stiff sentence.

5 MR. HILL: May I say one thing, Your Honor?

6 THE COURT: Yes, Mr. Hill.

7 MR. HILL: You know, what all of you need to realize  
8 is that mordida, bribery, corruption is a way of life in  
9 Mexico from the bottom to the top. The president -- every  
10 president is involved in the drug business as is every  
11 governor, as is everybody over there.

12 The people who assume power over there by election  
13 or by hook or crook, they are all involved in the drug  
14 business. That -- I told one of my secretaries 25 years ago,  
15 I said, "Mexico's going to be a worse problem for us than  
16 Columbia ever was."

17 I saw it coming 25 years ago. I've known it because  
18 you can buy your way out of anything over there and everybody  
19 gets a cut and everybody gets paid. The heads of the  
20 military -- the military right now is under Joaquin Guzman,  
21 Chapo Guzman. The military works for the Sinaloa cartel;  
22 whereas -- I mean, it's just -- it's -- you can't even  
23 imagine. That country, from bottom to top, everybody is on  
24 the take. Everybody's involved in it. That's just the way  
25 life is over there.

1           And I don't think we -- people over here really  
2 realize that. They think "Oh, President Calderon is trying to  
3 do all these things for" -- you know, to get -- what happens  
4 is the drug dealers will say "Okay, we'll give you this or  
5 this" to appease them, to satisfy them, you know, to let them  
6 wet their beak. So that way, it looks like they're really  
7 doing something. They're not doing anything.

8           I mean, that's the way it is over there. I've done  
9 this for 38 years. I've watched it. I represented the first  
10 drug lord that ever came out of the Juarez area. His name was  
11 Oscar Yanez. And I've represented most of the major drug  
12 lords from the northern part of Mexico over this period of  
13 years. And I've watched them and I know what they do. I know  
14 how they operate. And, you know, you either -- you either  
15 cooperate over there and you play their game or they kill you.  
16 That's just the way it is.

17           THE COURT: That's my impression, too, Mr. Hill.  
18 You've seen it more closely than I have, that's for sure,  
19 because all I know is what I learn here as a judge, but also  
20 what I read and think about.

21           I can't address that sort of macro problem. It  
22 does -- you're correct in bringing it up, though, because it  
23 does cast a different light on the deterrence factor that the  
24 Court has to fold into the decision here, recognizing that the  
25 deterrence issue in that neck of the woods is decidedly

1 different than what it is up here.

2 MR. HILL: Do you know that right now, LaLinea has  
3 been decimated, the Juarez cartel? I mean, they have killed  
4 the stepson of -- I mean, Amado Carillo is not dead.  
5 Everybody thinks he's the Lord of the Skies, that guy? He's  
6 not dead. He has CIA protection. Everybody knows that. I  
7 mean, you know, third-graders know that.

8 THE COURT: Is he still in Mexico?

9 MR. HILL: No, ma'am. He's here.

10 THE COURT: In the United States?

11 MR. HILL: Yes, ma'am, with \$13 billion.

12 And at the same time, his brother, Vicente, who took  
13 over the cartel there, had a stepson that was involved in it.  
14 They called him Hota-elay (phonetic) or Cinco. His name is  
15 Jose Luis. Supposedly they killed him a month ago but, you  
16 know, they have been -- all these murders have been like  
17 killing the cockroaches and then getting around to the eggs.

18 But they go down to these out-of-the-way places and  
19 they recruit people who make a dollar a week or something, and  
20 they bring them in and they become the new Juarez cartel  
21 people. They're just fodder, cannon fodder.

22 THE COURT: Right. I know. I hear you.

23 MR. HILL: I'm just saying -- I mean, I don't know  
24 what the solution is. I don't know that there's ever going to  
25 be a solution.

1           THE COURT: I wish that there was -- I wish there  
2 were a solution. What I know is that a solution has to be  
3 hammered out way beyond anything that a single judge in  
4 Indianapolis, Indiana can do. So I just have to measure the  
5 criminal conduct of Mr. Fierro and try to figure out what sort  
6 of sentence is appropriate for him.

7           MR. HILL: Yes, ma'am.

8           THE COURT: So I'm going to impose a sentence at the  
9 low end of the guidelines. If the Government's correct,  
10 there's lots of reasons to go higher. There's lots of  
11 reasons to go above the guidelines, but in doing the low end  
12 of the guidelines as the reasonable sentence here -- there's  
13 no way you can say 27 months [sic] is an easy sentence --

14          MR. HILL: Years?

15          THE COURT: -- and the defendant is 47, so that  
16 means he's going to be into old age by the time the sentence  
17 is fully served.

18          We may be doing you a favor, Mr. Fierro, by getting  
19 you out of that horrific situation that you find yourself in;  
20 although I don't want to be glib about this sentence because I  
21 know it's not anybody's first choice that you give up your  
22 liberty and your freedom.

23          But it sounds like it's just an unsafe place, that  
24 it may be that there's at least some benefit to having you  
25 removed from it and put in a protected setting.

1           The other reason for the 324 months, besides the  
2 fact that it's adequate punishment in my opinion, is that it  
3 is one way of reflecting the cooperation and the assistance  
4 you've already given. The Rule 35 motion will come if you  
5 deliver on your promise to cooperate fully.

6           There is no 5K.1 before the Court for substantial  
7 assistance, but according to both lawyers, you've been  
8 providing assistance that has been helpful and they expect it  
9 to continue. So that's why I'm imposing the sentence at the  
10 low end of the guidelines.

11           Furthermore, if you don't -- if you don't learn the  
12 lessons of all of this by the end of a 27-year time period,  
13 you never will. What's going to happen at the end of this  
14 sentence is that you'll do like most people. You'll just sort  
15 of mellow out into old age. There's just a point at which  
16 you're not going to do it anymore.

17           So in any event, I think it's almost academic if the  
18 sentence is any longer than that because 27 years added on to  
19 your 47 years means that you'll be 74 when this sentence is  
20 finally done. That's enough.

21           The period of supervised release, though, the  
22 statute says no less than five years, and so I'll make that  
23 five years.

24           Miss Schneeman wants me to clarify that the period  
25 of time is 324 months, which is 27 years on the time of

1 incarceration.

2           Supervised release is five years. That's what the  
3 statute requires, and that's what the guidelines say as well.  
4 So it will be subject to these terms and conditions. You must  
5 not commit any other federal, state or local offenses while  
6 you're on supervised release. You must not possess any  
7 firearm, ammunition, destructive device or any other dangerous  
8 weapon. You must cooperate with the collection of a DNA  
9 sample. You must refrain from all unlawful uses of controlled  
10 substance.

11           I'll require you to submit to one drug test within  
12 15 days of placement on supervised release and two periodic  
13 tests thereafter. But you will not, unless there's some drug  
14 use that's detected then, have to continue to undergo drug  
15 treatment because you don't pose a risk of that.

16           You must give the probation officer access to any  
17 requested financial information, and you'll be subject to  
18 being searched while you're on supervised release. That  
19 permission to search extends virtually everywhere: Your  
20 person, vehicle, office, business, residence, and property,  
21 including computer systems and peripheral devices.

22           You must submit to the seizure of any contraband,  
23 which means any illegal property, drugs, guns, computer stuff,  
24 anything like that. So forewarn the other occupants of the  
25 premises that you'll be subject to such searches.

1           Upon the completion of imprisonment, you must  
2       surrender to the immigration authorities for deportation  
3       proceedings pursuant to the Immigration and Naturalization  
4       Act. And if detained, you shall not be required to report to  
5       the probation officer within 72 hours of release from  
6       imprisonment. If you're not detained, then you must report  
7       within 72 hours of your release.

8           You shall not enter the U.S. illegally. If you're  
9       granted permission by immigration authorities to remain in or  
10      legally reenter the U.S. during the period of supervised  
11      release, then you must report immediately to the probation  
12      officer.

13           I'm not going to impose a monetary fine. The  
14      sentence is very long, and it appears to me you don't have the  
15      financial wherewithal to pay it despite your drug activity.  
16      The \$100 special assessment is mandatory, and so that's part  
17      of the judgment as well.

18           So let me ask: Mr. Hill, do you have a  
19      recommendation you want me to make to the Bureau of Prisons  
20      about the place of incarceration?

21           MR. HILL: La Tuna, the Federal Correctional  
22      Institution, is right outside El Paso.

23           THE COURT: Is that going to be a safe place?

24           MR. HILL: Yes, ma'am. The safest place you can be  
25      is with the federal government.



1           THE COURT: Mr. Adamson, we'll include that  
2 recommendation, please.

3           PROBATION OFFICER: Yes, Your Honor.

4           THE COURT: The sentence that I've outlined, do you  
5 have any objection to it as a legal matter, Mr. Hill, or do  
6 you request any further elaboration of my reasons?

7           MR. HILL: No, Your Honor. I'm satisfied. Thank  
8 you.

9           THE COURT: Do you, Mr. Blackington?

10          MR. BLACKINGTON: No, Your Honor.

11          THE COURT: The sentence then, Mr. Fierro, that I've  
12 previously outlined as my intended sentence is now the  
13 judgment of the Court, and a Judgment and Commitment Order  
14 will be drawn up to reflect these elements as I've laid them  
15 out here, and they will bind you in these ways until the  
16 judgment's fully satisfied.

17          My understanding of your agreement is that you've  
18 waived your right to appeal this sentence, but you need to  
19 talk to Mr. Hill about that. I'm not making a ruling. It's  
20 not mine to make.

21          If you think that you've retained a right to file a  
22 Notice of Appeal, you should do that. You must do that within  
23 10 days of the entry of judgment. The judgment won't get on  
24 the docket today, but it will be sometime next week that it  
25 will, and then you count the ten days out from that if you

1 need to file a Notice of Appeal.

2           The Government has indicated that it intends to and  
3 has agreed to file a Rule 35 motion, which will bring the  
4 matter of your sentence back before me if you continue to  
5 cooperate. So we'll wait and see on that, but for now, you  
6 must serve the sentence that's imposed.

7           So good luck to you, Mr. Fierro.

8           Mr. Hill, thank you, sir.

9           MR. HILL: Thank you, ma'am.

10          THE COURT: Thank you, Mr. Blackington.

11          MR. BLACKINGTON: Thank you, Your Honor.

12          THE COURT: Stay nearby after the hearing and I'll  
13 make my arrangements for you.

14          MR. HILL: Thank you, ma'am.

15          THE COURT: Thank you, Mr. Hernandez.

16          THE INTERPRETER: You're welcome.

17          MR. HILL: Oh, Your Honor, one request that both  
18 Mr. Fierro and his wife have made is that he be allowed to hug  
19 her before he leaves here today. I don't --

20          THE COURT: I leave those things to the marshal.  
21 They usually are as accommodating as they can possibly be, but  
22 that doesn't mean they always go along with it.

23          MR. HILL: Yes, ma'am.

24

25

(Court adjourned.)

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CERTIFICATE OF COURT REPORTER

I, Laura Howie-Walters, hereby certify that the foregoing is a true and correct transcript from reported proceedings in the above-entitled matter.

/S/LAURA HOWIE-WALTERS May 21st, 2010

LAURA HOWIE-WALTERS, RPR/CSR  
Official Court Reporter  
Southern District of Indiana  
Indianapolis Division